Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In Re:	)	
	)	
Delete Delete Delete	)	GN Docket No. 25-133
	)	
	)	
	)	

COMMENTS OF AT&T

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The Delete Delete Delete proceeding ("Delete Proceeding") represents a critical opportunity to provide comments "identifying [Federal Communications Commission ("FCC" or "Commission")] rules for the purpose of alleviating unnecessary regulatory burdens."[1] The Commission has requested that submissions "identify with as much detail and specificity as possible" rules that should be repealed or modified, and the rationale for the recommended action—which could include cost-benefit analysis, marketplace and technological changes, and more.[2] With these comments and accompanying table, AT&T Services, Inc., on behalf of itself and its affiliates (collectively, "AT&T"), identifies a number of regulations and regulatory proceedings that fall within the scope of the Delete Proceeding, and encourages the Commission to take this opportunity to eliminate or modify these matters in order to encourage technological innovation.

[1] *In re Delete, Delete, Delete*, GN Docket No. 25-133, Public Notice, DA 25-219, at 1 (rel. Mar. 12, 2025) ("Public Notice").

[2] Public Notice at 2-3.

I. INTRODUCTION AND SUMMARY

AT&T respectfully submits these comments in response to the Public Notice seeking input on identifying FCC rules that impose unnecessary regulatory burdens.[3]

Chairman Carr correctly noted that the FCC and other federal agencies have long "added new regulatory requirements in excess of their authority or kept lawful regulations in place long after their shelf life had expired," a problem that "creates headwinds and slows down our country's innovators, entrepreneurs, and small businesses."[4] Nearly 30 years ago, Congress enacted the procompetitive, deregulatory 1996 Telecommunications Act with the goal of reinventing communications in the United States and shifting decisively toward a vibrant, competitive marketplace. The 1996 Act has been hugely successful in transforming the American communications industry into an engine of growth and innovation. But the Act also contemplated that periodic reexamination of the need for regulations would become routine, and in this area the result has fallen short of Congressional aspirations—regulatory obligations have continued to multiply, and the promised periodic removal of obsolete regulations has often succumbed to inertia and stagnation. The Delete Proceeding, with its commitment to ending "*all* of the rules and regulations that are no longer necessary,"[5] represents what may be a once in a generation opportunity to fulfill the promise of the 1996 Act, seriously examine regulatory deadweight, and eliminate the pernicious economic drag that comes from it. AT&T applauds the Commission for launching this ambitious deregulatory effort.

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[3] *See generally* Public Notice.

[4] Statement of Chairman Carr, News Release, Mar. 12, 2025, https://docs.fcc.gov/public/attachments/DOC-410147A1.docx.

[5] *Id.* (emphasis added).

The White House has made clear that the Commission should act aggressively and quickly. On April 9, 2025, the President directed agencies to "*immediately* take steps to effectuate the repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency's statutory authority or is otherwise unlawful."[6] Consistent with this guidance, in the Commission's review of its rules in the Delete Proceeding, the Commission should "identify unlawful and potentially unlawful regulations" and take steps to repeal them "consistent with the 'good cause' exception of the Administrative Procedure Act" where appropriate and consistent with the Presidential directive.[7] AT&T fully supports the thoughtful, comprehensive proposals set forth in the comments of CTIA and USTelecom in this docket, which carefully examine changes and rule deletions that will foster investment in areas like the digital divide, public safety, and cybersecurity/national security. With these separate comments, AT&T urges the Commission to act on a number of additional issues to further drive competition and innovation. *First*, the Commission should remove outdated roaming rules that present undue burdens, dissuade network buildout, and are not justified by marketplace realities, and should specifically examine whether the roaming rules established in Section 20.12 fall within the Presidential memorandum's scope of unlawful regulations for review and repeal. *Second*, the Commission should take this opportunity to close the pending handset unlocking docket without adopting additional requirements; no customer harms or regulatory asymmetries exist to justify additional regulation. *Third*, to further the aims of the Delete Proceeding the agency should commit to reform its enforcement procedures and eliminate long-pending appeals that have imposed

[6] Memorandum for the Heads of Executive Departments and Agencies on Directing the Repeal of Unlawful Regulations, The White House, (Apr. 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/ ("April 9, 2025 Presidential Memorandum") (emphasis added).

[7] *Id.*

burdens on companies and stifled innovation. In light of the clear direction from the Supreme Court in *Jarkesy,* the FCC's forfeiture rules fall within the scope of the Presidential directive (which mentions *Jarkesy* by name) and can be eliminated without notice and comment. AT&T also provides a summary of its proposals in the chart attached in Appendix A.

In addition to providing these comments in response to the FCC's Delete Proceeding, AT&T met with various FCC bureau staff urging the relevant bureau to consider the regulations, as described herein, and as appropriate for this proceeding.[8]

II. THE FCC SHOULD ELIMINATE OUTMODED ROAMING OBLIGATIONS.

Roaming benefits consumers, allowing wireless providers to provide service and compete in areas where they do not yet have a network footprint. Both regional and national wireless providers in the robustly competitive wireless marketplace have a strong incentive to negotiate reasonable roaming terms, because these agreements benefit their own customers and allow providers to earn incremental revenue without placing strain on their networks, especially in rural areas. However, the Commission's existing roaming rules in Section 20.12[9] are based on an outmoded regulatory paradigm, are out of step with the fierce competition among wireless

[8] On April 9, 2025, Amanda Potter, Anisa Green, and Caroline Van Wie of AT&T Services, Inc. met virtually with Jaime McCoy, Hunter Deeley, and Ryan McDonald, of the Enforcement Bureau; separately, also on April 9, 2025, Amanda Potter and Anisa Green met virtually with Trent Harkrader, Molly M. O'Conor, Edward Krachmer, Irina Asoskov, Matthew Baker, and Connor Ferraro, of the Wireline Competition Bureau. On April 10, 2025, Amanda Potter and Anisa Green met virtually with Amy Brett, Roger Noel, Jeffrey Tignor, Garnet Hanly, Blaise Scinto, Janet Moran and Joy Ragsdale of the Wireless Telecommunications Bureau. During each of these meetings, AT&T's representatives discussed, consistent with the mandate of each Bureau, priorities for repeal, closure, and other reform as identified in these comments, as well as the comments of USTelecom and CTIA submitted separately in this proceeding. *See* 47 C.F.R. § 1.1206(b)(1).

[9] The Commission should delete the entirety of Section 20.12, including Section 20.12(a); once the substantive provisions in Sections 20.12(b), (c), (d), and (e) are eliminated, there is no need for the scoping provisions in Section 20.12(a). 47 C.F.R. § 20.12.

providers, and unnecessarily burden commercial roaming agreements. The roaming rules also discourage investment and innovation in America's networks, by enabling some providers to rely on roaming at the expense of building out their own networks. As Chairman Carr has explained, "a rule that *requires* providers to share their communications facilities with competitors generally reduces incentives to invest, meaning less build out and decreased competition."[10] As part of the Delete Proceeding, the Commission should revisit these regulations and—as described above—explore whether elimination of the roaming rules falls within the scope of the Presidential memorandum on repealing unlawful regulations.[11]

A. The Commission Should Delete Section 20.12(b), Which Sunset Over Two Decades Ago.

The Commission's resale requirements set forth in Section 20.12(b) sunset over 20 years ago but remain codified in the Commission's rules.[12] There is no serious argument for reinstating these requirements, even if there were a mechanism to do so. The Commission should proceed with deleting this superfluous provision of its rules.

B. The Manual Roaming Requirement in Section 20.12(c) is Obsolete and Should Be Eliminated.

Section 20.12(c) provides another easy target for elimination. This functionally obsolete rule requires cellular, broadband Personal Communications Services ("PCS"), and certain Specialized Mobile Radio ("SMR") providers make manual roaming service available upon

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[10] Statement of Commissioner Brendan Carr, *Improving Competitive Broadband Access to Multiple Tenant Environments*, 34 FCC Rcd 5702, 5763 (2019) (emphasis added).

[11] *See* April 9, 2025 Presidential Memorandum; *see supra* at 3.

[12] *See* 47 C.F.R. § 20.12(b)(3) ("This paragraph shall cease to be effective five years after the last group of initial licenses for broadband PCS spectrum in the 1850–1910 and the 1930–1990 MHz bands are awarded; i.e., at the close of November 24, 2002."); the Commission should also delete the related provision explaining the scope of Section 20.12(b), *see* 47 C.F.R. § 20.12(a)(1).

request to customers of other cellular, broadband PCS, and certain SMR providers, provided that the roamers' handsets are "technically compatible" with the roamed-on network.[13]

Manual roaming requires the subscriber to take action to establish a relationship with the host provider on whose system he or she wants to roam. As early as 2007, the Commission recognized that automatic roaming provides far more ease for consumers.[14] Because of this, wireless providers have moved away from manual roaming, and automatic roaming gained universal adoption. Thus, due to "marketplace and technological changes," the manual roaming obligation has become "unnecessary or inappropriate."[15] The Commission should remove the long-unused manual roaming requirement.

C. The "Just and Reasonable" Roaming Requirement in Section 20.12(d) Undermines Competition and Should Be Deleted.

Section 20.12(d) of the Commission's rules requires cellular, broadband PCS, and certain SMR providers to provide automatic roaming upon reasonable request to any technologically compatible, facilities-based Commercial Mobile Radio Service ("CMRS") carrier based on terms that are just and reasonable.[16] Before the Commission implemented this automatic roaming obligation, the marketplace incentivized providers to negotiate roaming agreements to drive incremental revenue and compete in areas where they did not have a footprint. Indeed, competition among wireless providers has been a hallmark of the industry since its early

[13] 47 C.F.R. § 20.12(c); the Commission should also delete the related provision explaining the scope of Section 20.12(c), *see* 47 C.F.R. § 20.12(a)(1).

[14] *In the Matter of Reexamination of Roaming Obligations of Com. Mobile Radio Serv. Providers*, 22 FCC Rcd 15817, ¶ 27 (2007).

[15] *See* Public Notice at 3.

[16] 47 C.F.R. § 20.12(d).

beginnings.[17] By implementing mandatory automatic roaming obligations, the Commission displaced commercial negotiations and an already-thriving competitive ecosystem, and imposed decades-old common carrier regulation on commercial negotiations in a robustly competitive service that has attracted billions of dollars in new investment.

Rather than let competitors negotiate themselves over terms that would allow their customers access to other networks (and provide revenue from other providers' customers using their networks), the common carrier roaming mandate in Section 20.12(d) makes the *government* the final arbiter of what one provider must offer to another. This heavy-handed regulation may have made sense when a single entity held monopoly control over telecommunications facilities, but the modern wireless marketplace is vastly removed from that historical model. Today, wireless providers compete not only with each other but also with entities offering similar services over unlicensed spectrum, constantly vying to bring their customers the best coverage at the lowest price. There is no reason to think that the imposition of rigid common carrier requirements on roaming contracts led to more roaming or better consumer access to service. Instead, the obligation (and the threat that the Commission will intervene on a "case by case" basis to resolve disputes based on a "totality of the circumstances") has led to greater uncertainty and higher compliance costs.

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[17] *See, e.g.*, In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Fifth Report at 4 (Aug. 3, 2000) ("In the year 2000, the CMRS industry continues to benefit from the effects of increased competition as evidenced by lower prices to consumers and increased diversity of service offerings."); In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Third Report at 2 (Jun. 11, 1998) ("In the year since the release of the Second Report, competition in a number of segments of the CMRS industry has grown more than it has ever before."); In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Second Report at 6 (Mar. 25, 1997) ("Our examination of the CMRS industry since our first report indicates that competition is developing throughout the industry.")

The Commission should eliminate the automatic roaming rule and return to allowing the competitive wireless marketplace to determine the reasonableness of commercial roaming arrangements. The automatic roaming mandate was, and remains, unnecessary—and now serves as a deterrent to investment and innovation.[18]

D. The "Commercially Reasonable" Data Roaming Requirement in Section 20.12(e) Undermines Competition and Should Be Deleted.

The Commission should also delete Section 20.12(e) of the Commission's rules, which requires, subject to certain limitations, a facilities-based provider of commercial mobile data services to offer roaming arrangements to other such providers on what the Commission determines are "commercially reasonable" terms.[19]

The data roaming rule is unnecessary and was never supported by record evidence. When the Commission adopted the "commercially reasonable" standard in the *2011 Data Roaming Order*, it did not justify the new rules based on evidence of a marketplace failure.[20] Indeed, the Commission stated at the time that commercial reasonableness would be determined, in part, by the rates and terms that prevailed in the existing, negotiated roaming agreements that sophisticated parties relied on to compete in the marketplace.[21] As such a standard recognized,

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[18] This stands in contrast to the resale market. Following the sunset of the Commission's resale requirements, there has been a boom in mobile virtual network operators reselling services to compete with facilities-based providers—despite no requirement to offer such services for resale. *See 2024 Communications Marketplace Report*, GN Docket No. 24-119, FCC 24-136, ¶ 4 (rel. Dec. 31, 2024).

[19] 47 C.F.R. § 20.12(e).

[20] *See In the Matter of Reexamination of Roaming Obligations of Com. Mobile Radio Serv. Providers & Other Providers of Mobile Data Servs.*, 26 FCC Rcd 5411 (2011) ("*2011 Data Roaming Order*").

[21] *2011 Data Roaming Order* ¶ 52.

providers already had strong incentives to negotiate reasonable roaming arrangements to drive incremental revenue and compete in areas where they did not currently have facilities.

Several years after the *2011 Data Roaming Order*, the Commission issued a Declaratory Ruling that disrupted the original "commercially reasonable" standard.[22] The 2014 Declaratory Ruling pivoted to a "I know it when I see it," entirely case-by-case analysis when evaluating whether a data roaming arrangement is "commercially reasonable."[23] And although the "commercially reasonable" standard is different—and somewhat less intrusive—than the common carrier "just and reasonable" standard, the result has been similar to the impact of the roaming rule in Section 20.12(d): an increase in cost and uncertainty for providers, who can never be fully certain that an arms-length, mutually beneficial transaction in a robustly competitive environment will be judged "commercially reasonable" by the Commission. The prospect of the FCC stepping in and rejecting the parties' negotiated terms overhangs all roaming agreements under Section 20.12(e).

Despite granting itself the authority to define commercial reasonability on a case-by-case basis, untethered to the marketplace, the FCC's threatened intervention has not improved the competitive environment or made it more fair for consumers. On the contrary, the requirements distort and inhibit more effective competition among wireless providers by creating the opportunity and incentive to avoid network investments that competition otherwise would dictate. Roaming provides an essential, mutually beneficial arrangement among providers whose networks may have different geographic scope, but it should not be used as a long-term substitute for building out facilities and making use of scarce spectrum resources. The FCC's

[22] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 29 FCC Rcd 15483 (2014).

[23] *Id.*

data roaming rules make it more difficult to implement contract terms that recognize this distinction, undermining the Commission's build-out goals and potentially depriving Americans of competitive, facilities-based entrants in the marketplace.

In lieu of the vague and highly manipulable standard, eliminating Section 20.12(e) would ensure that providers can continue to exercise flexibility in negotiating commercial roaming agreements to best promote competition in the marketplace.

E. The 2022 Prescriptive Disaster Roaming Requirements in Section 4.17 Are Unnecessary and Could Impede Disaster Recovery Response.

The Commission also should delete Section 4.17 of its rules, which requires that each facilities-based mobile wireless provider enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the Mandatory Disaster Response Initiative ("MDRI") is active. The Commission introduced the MDRI in 2022, and in the process, it transformed an industry-developed framework for disaster response into regulatory obligations.[24] Though Chairman Carr supported the MDRI and disaster roaming requirements, he emphasized the need to ensure "carriers have the flexibility necessary to manage fast-moving and diverse disaster scenarios."[25] The prescriptive requirements established in Section 4.17 do not allow for such flexibility.

Disaster response necessitates adaptability, rather than hardline rules. Providers must be able to actively assess the health of affected networks during disasters and make their own informed determinations on whether their network can accommodate the customers of other

[24] *See Resilient Networks*, *et al.*, 37 FCC Rcd 8059 (2022).

[25] *Id.* at 8104.

providers.[26] Moreover, providers require the ability to adapt and engage in real-time coordination with each other to facilitate a roaming request during disaster. Thus, regulation impairs wireless providers' discretion on whether and how to extend roaming to other requesting providers. Perhaps most importantly, while providers should be able to request access to competitors' facilities in times of need, providers should also be properly incentivized to invest in their *own* mitigation and resilience resources. Overly prescriptive regulations run the risk of discouraging this kind of investment, which harms disaster preparedness for all consumers.

That does not mean carriers should not engage in mutual aid during disasters. Here, however, experience gained from implementation of a rule provides "reason to believe that the rule is unnecessary or inappropriate."[27] Providers have long engaged in mutual aid and roaming after disasters—even when there were no requirements to do so. AT&T specifically has a long history of providing access to its robust and resilient network to other providers in times of crisis, and it will continue to do so, regardless of regulatory mandates.

As AT&T explained in the proceeding that led to the disaster roaming rule, the mandate embodied in Section 4.17 was "a solution in search of a problem."[28] Wireless providers had developed a voluntary Framework as far back as 2016 to govern post-disaster roaming, under which participants agreed to "implement reasonable roaming under disasters arrangements when technically feasible; foster mutual aid during emergencies; enhance municipal preparedness and restoration; increase consumer readiness and preparation; and improve public awareness and

[26] *See* Comments of AT&T, PS Docket No. 11-60, at 9 (filed Apr. 26, 2021).

[27] Public Notice at 3.

[28] *See* Comments of AT&T, In the Matter of Resilient Networks, PS Docket No. 21-346, at 9 (December 16, 2021).

stakeholder communications on service and restoration status."[29] AT&T served as an original signatory to the Framework and took its obligations under that agreement seriously—but it also allowed roaming even outside the Framework. In the years before the rule, AT&T "allowed other wireless carriers to roam temporarily on its network and vice versa (or mutually) after a tornado, ice storm, derecho, and nor'easter, none of which triggered the Framework's activation. In addition to these weather-related events, AT&T and other signatories also have temporarily roamed after a bomb explosion, a fiber cut, and a power company electrical fire."[30]

The MDRI has thus led to increased costs and decreased flexibility without *any* commensurate benefits. The voluntary Framework and the commitment of providers to act above and beyond the Framework itself were already producing the outcome that the roaming rule sought to achieve: "To the best of our knowledge, AT&T Mobility has never denied a roaming request if it had capacity because the requesting wireless carrier was not a signatory to the Framework, and we have no knowledge that other signatories have denied such roaming requests on that basis."[31]

The FCC should also revisit the disaster roaming rule for a separate but related reason—the decision under prior Commission leadership to transform voluntary industry standards into binding regulatory obligations sets a troublesome precedent that may have unintended effects going forward. When it came to post-disaster roaming, industry recognized the need for, and developed, a set of standards governing roaming requests. The resulting Framework allowed signatories to partner and find ways to enhance roaming capabilities in times of stress on the

[29] *Id.* at 7.

[30] *Id.* at 9.

[31] *Id.*

various networks. "For example, AT&T and another nationwide carriers [] worked collaboratively to establish detailed processes and procedures to facilitate and expedite roaming requests after disasters."[32] Writing these procedures into law not only makes it harder for the companies involved to change and adapt going forward, but it also discourages robust collaboration in the future. If the Commission sets the precedent that voluntary agreements might be transformed into binding legal commitments regardless of whether they are working, providers will likely be more reluctant to collaborate in the future—and certainly will have incentives to be more cautious in the size and scope of any collaborative efforts.

For all these reasons, the disaster roaming requirement is not just unnecessary, it is counterproductive. The Commission should eliminate these inflexible mandatory disaster roaming requirements.

III. THE FCC SHOULD CLOSE THE HANDSET UNLOCKING NPRM.

The Commission launched a Notice of Proposed Rulemaking ("NPRM") last year to explore the use of handset unlocking policies, with the goal of improving consumer choice and competition in the mobile wireless marketplace.[33] The Commission's proposals would build on six general handset unlocking commitments included in the CTIA Consumer Code for Wireless Service that AT&T and others have agreed to abide.[34] Similar to MDRI, in the handset unlocking NPRM the prior Administration sought to move away from reliance on voluntary, industry-developed practices in favor of rigid regulatory obligations, without any indication that

[32] *Id.* at 10.

[33] *See generally Promoting Consumer Choice and Wireless Competition Through Handset Unlocking Requirements and Policies*, WT Docket No. 24-186, Notice of Proposed Rulemaking (2024) (the "NPRM").

[34] *Id.* ¶ 1.

regulatory intervention was necessary to benefit consumers. Because adopting the proposed rules would directly contradict the Trump Administration's goal of eliminating unnecessary and burdensome regulation, the Commission should close the proceeding launched by the NPRM without further action.

Contrary to the NPRM's assertions, mandating handset unlocking within 60 days of activation will not lead to lower prices for the benefit of consumers.[35] Instead, adopting the NPRM's proposals would both impose an undue regulatory burden on wireless providers and *disadvantage* consumers, by reducing providers' flexibility to offer cutting edge devices in accessible ways.

The absence of a handset unlocking mandate allows wireless providers to offer the latest and greatest handset devices to consumers at lower prices—all while placing some measure of competitive pressure on the world's largest technology companies/device OEMs. Locking the handset gives providers a secured interest in devices sold and certainty that the customer will stay with the provider long enough to recover the cost of the device, thereby allowing consumer-friendly offers on handset promotions and zero-interest financing.[36] Absent a locking option, providers would be forced to recover their costs on a shorter timeframe. The cost of eliminating the protection needed for providers to offer the newest, most innovative devices through promotional arrangements and flexible financing far outweighs any potential benefits from the

[35] *See Ex Parte* of AT&T, WT Docket No. 24-186, at 1-2 (filed Oct. 29, 2024) ("AT&T Handset Unlocking October 29, 2024 *Ex Parte*").

[36] *See* Comments of AT&T, WT Docket No. 24-186, at 3-4 (filed Sept. 9, 2024) ("AT&T Handset Unlocking Comments").

proposed regulation.[37] Adopting the NPRM's proposals would instead decrease consumers' ability to access new devices.

The NPRM proposal could also invite additional fraud risk to the device ecosystem. Mandatory handset unlocking policies would enable flippers to purchase handsets at discounted prices and resell them before a provider can recover the costs of its promotional offer,[38] which would make these discounted and lower-cost offerings uneconomic. Moreover, requiring providers to unlock handsets within 60 days of activation, even if not paid-off, could encourage fraud and trafficking—disincentivizing providers to compete on aggressive handset promotions and flexible handset financing offerings.[39] Indeed, providers who have voluntarily accepted handset unlocking conditions also subsequently saw increases in fraud and abuse, underlining the downsides to the NPRM's proposals.[40]

Finally, alleged regulatory asymmetries cannot justify the proposed handset unlocking regulations. The Commission's rules explain that all providers are subject to the rule permitting phone unlocking; no regulatory asymmetry exists.[41] Any claimed "asymmetries" in handset unlocking requirements are the result of choices that individual providers have made in exchange for specific benefits. These include substantially lower costs for spectrum encumbered by mandatory unlocking obligations, or conditional approval for merger transactions that providers willingly entered.[42]

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[37] *See* Public Notice at 2-3.

[38] *See* AT&T Handset Unlocking Comments at 4.

[39] *See* AT&T Handset Unlocking October 29, 2024 *Ex Parte* at 1.

[40] AT&T Handset Unlocking Reply Comments at 3.

[41] *See* Reply Comments of AT&T, WT Docket No. 24-186, at 5-6 (filed Sept. 23, 2024) ("AT&T Handset Unlocking Reply Comments").

[42] *See* AT&T Handset Unlocking Comments at 6.

The Commission should close the NPRM and preserve the status quo.

IV. THE FCC SHOULD REFORM ITS ENFORCEMENT PRACTICES AND TAKE ACTION TO CLOSE LONGSTANDING PROCEEDINGS AND THOSE THAT EXCEED THE COMMISSION'S AUTHORITY.

The Supreme Court's decision in *SEC v. Jarkesy* calls into serious question the constitutionality of the enforcement regime established for the Commission by Congress—and implemented by the FCC in its rules. The Supreme Court explained in *Jarkesy* that where "the civil penalties . . . are designed to punish and deter, not to compensate," they are a "a type of remedy at common law that could only be enforced in courts of law," and thus "implicate[] the Seventh Amendment right, and that a defendant would be entitled to a jury."[43] Under the Court's clear reasoning in *Jarkesy*, the Commission's practice of imposing monetary "forfeitures" without affording targets the right to a jury trial violates the Seventh Amendment of the Constitution.[44] The Commission should eliminate rules that impose such unlawful financial penalties, and could do so without the delay imposed by notice-and-comment proceeding pursuant to the April 9, 2025 Presidential directive.[45] Indeed, the Presidential memorandum makes clear that agencies should "give priority" to regulations that conflict with certain Supreme Court decisions—including *Jarkesy*.[46]

There are also other opportunities for reform to the Commission's enforcement process that would allow the Commission to continue policing violations of its rules and vindicating the

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[43] *SEC. v. Jarkesy*, 603 U.S. 109, 125 (2024).

[44] *See In the Matter of Telnyx LLC*, FCC-25-10, Notice of Apparent Liability for Forfeiture (rel. Feb. 4, 2025) (Dissenting Statement of Commissioner Nathan Simington) ("While the conduct described in this NAL is particularly egregious and certainly worth enforcement action, I continue to believe that the Supreme Court's decision in *Jarkesy* prevents me from voting, at this time, to approve this or any item purporting to impose a fine.").

[45] *See* April 9, 2025 Presidential Memorandum.

[46] *Id.*

public interest,[47] while providing regulated parties with more opportunities to be heard at each stage of the investigatory and enforcement process. Ultimately, the FCC's enforcement process should be reformed to stay true to its statutory authority and establish necessary controls to ensure fair treatment of investigative targets.

Experts have identified a number of steps that the Commission should consider.[48]

A non-exhaustive list of meaningful reforms that the Commission should make include the following:

- Reaffirm that it is inappropriate for both due process and good governance reasons to use enforcement actions to adopt new interpretations of the law or adopt new legal requirements.
- Overhaul the investigative process by adopting limits and guardrails for Letters of Inquiry ("LOIs"), such as by: requiring independent approval of investigations before they are launched; including particularized articulation of the scope of the investigation; placing limits on the number of investigative demands and adopting response timelines consistent with the Federal Rules of Civil Procedure; establishing a process for allowing enforcement targets to object to LOI questions before an independent decision-maker; sharing third-party evidence promptly with targets; providing a reasonable opportunity for extensions; placing limits on

[47] *See*, *e.g.*, *In the Matter of Cunningham Broadcasting Corporation, et al.*, FCC 24-88, Forfeiture Order (rel. Sept. 6, 2024) (Dissenting Statement of Commissioner Brendan Carr) ("As I've said before, it is time for the FCC to start the process of fundamentally reforming our enforcement practices—lest the courts step in, including in cases where bad actors deserve accountability. I think the days are numbered for FCC enforcement decisions that rest on stacked penalties, creative math, surprise standards, and extraneous behavioral conditions.").

[48] *See, e.g.*, Thomas M. Johnson, Jr., White Paper on FCC Enforcement Bureau Reform at 24-26 (Jan. 29, 2024), https://comms.wiley.law/8/5148/uploads/white-paper-on-fcc-enforcement-bureau-reform-01.29.2024-tj.pdf.

asymmetrical tolling agreements or extensions; and requiring notification when investigations are closed.

- Reform the notice of apparent liability ("NAL") process to provide investigative targets with an opportunity to formally respond to the NAL before it is made public.
- Formally prohibit the use of enforcement actions, such as NALs or consent decrees, in other proceedings.

Among the lowest-hanging fruit for immediate change, the Commission should close long-pending investigations and other open proceedings that exceed the Commission's authority. By the same token, the FCC should also address a critical concern with its Universal Service Administration Company ("USAC") audit appeals process—there is no deadline for resolving these appeals. In many instances, the Commission has simply declined to act, allowing the proceedings to grow stale.[49] As a result, companies often are required to hold significant

[49] *See*, *e.g.*, *In the Matter of Request for Review by Cingular Wireless LLC of Decisions of Universal Service Administrator*, CC Docket Nos. 96-45, 97-21 (filed Mar. 31, 2006) (This appeal remains pending); *see also In the Matter of Cingular Interactive, LP, Application for Review of Invoices and Dunning Notices from the Universal Services Administrative Company*, CC Docket No. 96-45 (filed Jan. 30, 2004); *In the Matter of Cingular Interactive, LP*, *Application for Review of Demand Letters and Dunning Notices Issued January 14, 2004 by the Universal Service Administrative Company*, CC Docket No. 96-45 (filed Feb. 4, 2004); *In the Matter of Cingular Interactive, LP*, *Application for Review of Demand Letters and Dunning Notices Issued February 20,2004 by the Universal Service Administrative Company*, CC Docket No. 96-45 (filed Mar. 22, 2004); *In the Matter of Cingular Interactive, LP*, *Application for Review of Demand Letters and Dunning Notices Issued March 11, 2004 by the Universal Service Administrative Company*, CC Docket No. 96-45 (filed May 10, 2004); *In the Matter of Cingular Interactive, LP*, *Application for Review of Demand Letters and Dunning Notices Issued May 12, 2004, 2004 by the Universal Service Administrative Company*, CC Docket No. 96-45 (filed June 9, 2004); *In the Matter of Cingular Interactive, LP*, *Application for Review of Demand Letters and Dunning Notices Issued June 16, 2004 by the Universal Service Administrative Company*, CC Docket No. 96-45 (filed July 12, 2004); *In the Matter of Cingular Interactive, LP*, *Application for Review of Demand Letters and Dunning Notices Issued July 20, 2004 and August*

financial amounts in reserve for years—or even decades—while these appeals remain pending. Further, companies may have made payments to the U.S. Treasury which cannot be recouped until the Commission reaches an appeals decision. Currently pending appeals should be immediately reviewed and resolved.

V. CONCLUSION

To encourage investments in next generation wireless networks and expand technological innovation, the FCC should proceed with instituting the reforms and deletions recommended above.

Respectfully submitted,

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16, 2004 by the Universal Service Administrative Company, CC Docket No. 96-45 (filed Sept. 20, 2004) (series of unresolved USAC appeals).